IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 841 OF 1984

Indian Bank .. Plaintiffs.

vs.

Bombay Plastics Industries

& Ors. .. Defendants.

Ms. M. Shah i/by Panjya Ghandhi & Co.
for the plaintiffs.
Mr. B.N. Vaishnawa for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 13th June, 2005.

P.C.

. The present suit is filed by the India Bank for the recovery of the sum of Rs. 78,884.67 in respect of the medium term loan and Rs. 55,283.31 in respect of the cash credit account. Some of the material facts of the present case are as under :-

2. Sometime on or about 11.1.1978 at the request of the defendant the plaintiffs agreed to grant medium term loan of Rs.46,500. The defendants executed various documents including demand promissory note dated 11.1.1978, an agreement of

hypothecation of movables, plant and machinery dated 11.1.1978 and a medium term loan agreement dated 11.1.1978. The said documents were executed in consideration of the said term loan lent and advanced by the plaintiff to the defendant. Under the said documents it was agreed that the minimum rate of interest will be 12 1/2% with quarterly rests. It was also agreed that the plaintiff will be entitled to charge higher rate of interest after giving notice to the defendants. The said term loan was accordingly disbursed to the defendant and was payable under the various terms and conditions as provided therein. The defendant also applied for a cash credit facility and pursuant thereto on 8.2.1978 the cash credit facility was granted. The defendant has executed various documents for the receipt of the said cash credit facility. It is the case of the plaintiff that the defendant has acknowledged the liability. Last of such acknowledgement was executed and liability confirmed on 30.6.1983. It is the further case of the plaintiff that in spite of the same, the defendant did not make payment nor repay the instalment amount as per the terms and conditions of the said agreements.

3. The plaintiff has filed the compilation of documents which are taken on record. The defendant has no objection to the said compilation of

documents being taken on record. The same are marked Exhibit P-1 collectively. The plaintiffs have also filed an affidavit of evidence of Ganesh N. Moorthy, being the officer of the plaintiff bank who has deposed that there has been default in the account of the loan lent and advanced by the plaintiff to the defendant. He has also deposed that various documents are executed by the defendant to repay the said amount. However, the same has not been paid. The said witness has also deposed that as on the date of the filing of the suit there was an amount of Rs. 1,34,167.98 is due and payable by the defendant to the plaintiff with further interest on the principal amount of Rs. 55,283.31 at the rate of 18% per annum with quarterly rests. The learned Advocate appearing for the defendant states that he has no instructions to cross-examine the said witness and in view thereof he is unable to proceed with the matter.

4. I have considered the matter. I find that the plaintiff has proved his case. The defendant has neither cross-examined the witness nor produced his own witness. Thus, the contention raised by the defendant in the written statement cannot be accepted. In any event, on a plain and simple reading of the written statement there is nothing but mere denials and in vie thereof the said contentions raised in the written statement are

rejected.

5. Thus, in the aforesaid circumstances, there shall be a decree against the defendant and in favour of the plaintiffs in the sum of Rs. 1,34,167.98 being the amount due and payable at the foot of the cash credit account with further interest on Rs. 55,283.31 and a sum of Rs. 78,884.67 towards the amount payable at the foot of the account in respect of the term loan granted. The plaintiffs shall also be entitled to further interest at the rate of 18% per annum from the date of the suit till payment and/or realisation. The learned counsel for the plaintiffs submits that there are no hypothecated material available. In view thereof, the decree shall be only in terms of prayer clauses (a) and (b). Suit disposed of accordingly. No order as to costs.